IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 431 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRILOKDHAN NIMRAJ DETHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 431 of 2004

MR PR NANAVATI for Petitioner No. 1-3

MS. MITA PANCHAL APP for Respondent No. 1

MR AG VYAS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 26/08/2004

ORAL JUDGEMENT

1. By filing instant petition under Article 226 of the Constitution read with Section 482 of the Code of

Criminal Procedure ('the Code' for short), the petitioners against whom FIR is registered vide CR No.I-340/2002, Annexure A to the petition, at Anjar Police Station for the offences punishable under sections 304-B, 306, 498-A and 114 of the Indian Penal Code and Sections 4 and 5 of the Dowry Prohibition Act, 1961 ('the Act' for short), have prayed to quash and set aside the said FIR.

2. The prosecution story as evident from the FIR is that one Sumanben, daughter of the complainant, was married to Mohandhan Trilokdhan Detha on 10.2.1996. Initially for a period of six months, their married life was normal but thereafter the husband Mohandhan and the present petitioners started torturing Sumanben on the issue of dowry. Because of such mental and physical torture given by husband of deceased Sumanben and present petitioners, ultimately Sumanben committed suicide on 23.9.2002 and it is alleged that the present petitioners have committed offences punishable under sections 304-B, 306, 498-A and 114 of the IPC and Sections 4 and 5 of the Act. In this connection, FIR is registered vide CR No.I-340/2000 at Anjar Police Station against the husband of deceased Sumanben and the present petitioners.

3. The petitioners have contended that so far as they are concerned, they have been wrongly arraigned as accused since the petitioners right from the beginning are residing at village Ghadsurya in the District of Jodhpur of Rajasthan. According to the petitioners, even if the allegations made in the FIR are taken to be true then also it cannot attribute any case against the present petitioners since the petitioners had no occasion to interact with deceased Sumanben in her day-to-day life. Deceased Sumanben got married to the main accused Mohandhan Trilokdhan Detha on 10.2.1996 at Balmer in Rajasthan. She committed suicide on 23.9.2002 and the FIR was lodged on 24.9.2002. After making investigation, the investigating agency submitted an application to the learned JMFC, Gandhidham and requested to insert section 304-B of IPC and Sections 4 and 5 of the Act. It appears that after collecting evidence, the charge-sheet was submitted on 18.11.2003 against the main accused Mohandhan Trilokdhan Detha whereas the present petitioners have been shown in column 2 as absconding accused. Since the offence under Section 306 of IPC is exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions under section 209 of the Code against Mohandhan Trilokdhan Detha where it was numbered as Sessions Case No.61 of 2003 and trial of the Sessions Case proceeded against Mohandhan Trilokdhan

Detha. Vide judgment and order dated 3.2.2004 the learned Additional Sessions Judge, Fast Track Court No.2, Gandhidham acquitted the main accused Mohandhan Trilokdhan Detha of the offences with which he was charged as no case against him has been proved by the prosecution. It is therefore submitted that since the offence against the main accused is not proved, it would be futile exercise to file charge-sheet against the present accused as they have played no role in the said crime. It is therefore prayed for the reliefs to which reference is made earlier.

4. I have heard Mr. PR Nanavati, learned advocate of the petitioners, Ms. Mita Panchal, learned APP for respondent No.1 - State of Gujarat as well as Mr. AG Vyas, learned advocate of respondent No.2/original complainant. I have gone through the averments made in the petition and also perused the impugned complaint.

5. It is not in dispute that marriage of deceased Sumanben with Mohandhan Trilokdhan Detha was solemnized on 10.2.1996 at Balmer in Rajasthan. Mohandhan is the main accused in the FIR lodged by the complainant. As per the allegations made in the FIR, she was subjected to mental and physical cruelty by him as well as the present petitioners on account of the issue of dowry and as a result thereof deceased committed suicide on 23.9.2002. Therefore FIR came to be registered by father of deceased Sumanben against her husband-Mohandhan, who is the main accused, as well as the present petitioners.

6. During the course of investigation, evidence was divulged against all the accused. The police prepared charge-sheet against the main accused Mohandhan and filed it before the Court but could not file charge-sheet against the present petitioners as they were shown in the charge-sheet as absconding.

7. So far as the charge-sheet filed against the main accused Mohandhan is concerned, the case was committed to the Court of Sessions as the offence under Section 306 of IPC was exclusively triable by the Court of Sessions. The Sessions Court vide judgment and order dated 3.2.2004 acquitted Mohandhan of the offences with which he was charged as the prosecution has failed to prove the charge levelled against him.

8. According to this Court, even if the prosecution is permitted to file charge-sheet against the present petitioners on the basis of the same set of evidence which has been led by the prosecution in the Sessions

Case conducted against the main accused Mohandhan, the prosecution will not be able to bring home the charge levelled against the present petitioners in view of the fact that the case against the main accused has not been proved as the prosecution has to rely upon the same witnesses and evidence to prove the charge against the present petitioners. Therefore, according to this court, no useful purpose would be served if the prosecution is allowed to file charge-sheet against the present petitioners.

9. It may be noted that though the petitioners have been shown in column No.2 of the charge-sheet filed against main accused Mohandhan as absconding accused, there is nothing on record to show that the prosecution has ever initiated proceedings against the present petitioners under section 82 of the Code where procedure is prescribed to prosecute against the absconding accused of a cognizable offence. It is also required to be noted that so far as Sessions Case conducted against main accused is concerned, none of the witnesses have supported the prosecution case during the trial and therefore the Sessions Court has acquitted the main accused Mohandhan of the offences with which he was charged. Therefore, according to this court, the FIR registered against the present petitioners vide CR No. I-340 of 2002 with Anjar Police station for commission of the offences under sections 304-B, 306, 498-A and 114 of IPC and under Sections 4 and 5 of the Act and the evidence collected by the investigating officer qua the present petitioners pursuant to the lodging of the FIR deserves to be quashed and set aside and the petition deserves to be allowed and the reliefs claimed therein are required to be granted.

10. For the foregoing reasons, the petition is allowed. FIR registered vide CR No. I-340/2002 with Anjar Police Station for the offences punishable under sections 304-B, 306, 498-A and 114 of IPC and under sections 4 and 5 of the Act against the present petitioners is hereby quashed and set aside and resultantly Anjar Police Station is directed not to file charge sheet against the present petitioners on the basis of the investigation carried out by them pursuant to the lodging of the said FIR and not to take any action against the present petitioners in respect of that case. Rule is made absolute accordingly.

(A.M. Kapadia, J.)

(karan)